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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,010

02/16/2007

Maria Gross

3706

6838

278

7590

06/09/2009

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EXAMINER

BOMBERG, KENNETH

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,010	<b>Applicant(s)</b> GROSS ET AL.	
	<b>Examiner</b> KENNETH BOMBERG	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/30/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

The reference to the claims in lines 4-6 and 20-22 of page 1 is inappropriate as the claims are subject to change.

Appropriate section headings have been omitted.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

#### **In Reference to Claim 1**

It is unclear if the claim is directed to the foam head alone or the foam head in combination with the propellant container.

In lines 3-4, the scope of the phrase “is embodied as seatable directly on a valve stem” is not understood; it is unclear if the claim requires the valve stem with the foam head seated thereon or if the foam head is only required to be capable of being seated thereon.

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If the claim is directed to the foam head alone, in lines 4-6 the requirement of the foam head having a lower portion with an outer diameter approximately equal to an inner diameter of the inner crimped edge is indefinite since without the container, there is no standard by which the required diameter may be determined.

In line 10, the scope of the phrase “for the sake of forming an annular spring” is not understood; it is unclear if the claim requires the foam head to have an “annular spring” or if the foam head is only required have the claimed recess.

In Reference to Claim 2

In lines 3-4, the scope of the phrase “is embodied as seatable directly on a valve stem” is not understood; it is unclear if the claim requires the valve stem with the foam head seated thereon or if the foam head is only required to be capable of being seated thereon.

In line 10, the scope of the phrase “for the sake of forming an annular spring” is not understood; it is unclear if the claim requires the foam head to have an “annular spring” or if the foam head is only required have the claimed recess.

In lines 11-12, it is unclear if the claim is directed to the foam head and container or the foam head and container in combination with the sleeve.

In Reference to Claims 3-6

In view of the indefiniteness in claim 2, lines 11-12, it is unclear if these claims are directed to the foam head and container or the foam head and container in combination with the sleeve.

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In Reference to Claims 4 and 5

The terms “slip-proof” and “decorative” in claims 4 and 5 respectively are relative or subjective terms which render the claim indefinite. The term “slip-proof” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. While “decorative” is described on page 4 of the specification as including “a special coloring and/or imprint” it is unclear what other aspects such as shape or surface reflectivity are included.

In Reference to Claim 6

In lines 3-5, it is unclear if the claim requires the guard cap or the sleeve merely must be capable of supporting a guard cap.

In line 4, it is unclear what the scope of the term “equivalent” encompasses within the context of the claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,096,002 to Focht (Focht) in view of US Patent No. 3,865,283 to Hayes (Hayes).

In Reference to Claim 1

Focht teaches:

A foam head (“dispensing head”; col. 2, lines 13-25; Figs. 2-3) for a propellant container (Figs. 1 and 4; 1), having an inner and outer crimped edge (Figs. 1 and 4; col. 1, lines 60-70) of a valve plate (2), in which the foam head (dispensing head), having an actuation button (12) and a foam dispensing opening (10), is embodied as seatable (via socket 9 of boss 8) directly on a valve stem (5), characterized in that a lower portion (Figs. 1 & 4; below boss 8 above cup 2) of the foam head (dispensing head) has an outer diameter (Figs. 1 and 4) approximately equal to an inner diameter (Figs. 1 and 4) of the inner crimped edge (Figs. 1 and 4); that in a lower region (Figs. 1 and 4) of the lower portion, diametrically opposite the actuation button (12), there is an outer rib (Figs. 1 and 4; 7) for engagement from beneath of a lower side of the inner crimped edge (Figs. 1 and 4); and includes a lower peripheral region (at elevation of toe 7)

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Focht does not teach the following structures taught by Hayes:

that a lower peripheral region (Fig. 6; skirt portion 13 adjacent nibs / beads 54b) of a lower portion is provided with at least one recess (Fig. 6; 55) for the sake of forming an annular spring (col. 4, line 67 to col. line 11).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the teaching of Hays to incorporate at least one recess in the lower peripheral region of the skirt (13) of Focht in order to permit inward yielding of the skirt during assemblage to the container while maintaining the dispensing head on the container during use as taught by Hayes (col. 4, line 67 to col. 5, line 11).

#### In Reference to Claim 2

Focht teaches:

A foam head (“dispensing head”; col. 2, lines 13-25; Figs. 2-3) having a propellant container (Figs. 1 and 4; 1), having an inner and outer crimped edge (Figs. 1 and 4; col. 1, lines 60-70) of a valve plate (2) of a valve plate (2), in which the foam head (dispensing head), having an actuation button (12) and a foam dispensing opening (10), is embodied as seatable seatable (via socket 9 of boss 8) directly on a valve stem (5), characterized in that a lower portion (Figs. 1 & 4; below boss 8 above cup 2) of the foam head has an outer diameter (Figs. 1 and 4) approximately equal to an inner diameter (Figs. 1 and 4) of the inner crimped edge (Figs. 1 and 4); that in a lower region (Figs. 1 and 4) of the lower portion, diametrically opposite the actuation button (12), there is an outer rib

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(Figs. 1 and 4; 7) for engagement from beneath of a lower side (14) of the inner crimped edge (Figs. 1 and 4); that a lower peripheral region (at elevation of toe 7); and that the outer crimped edge (Figs. 1 and 4) ***is intended as*** [emphasis added] a connecting seat of a sleeve sheathing at least the upper region of the propellant container (1) (the outer crimped edge of Focht is capable of performing as a connecting seat for a sleeve).

Focht does not teach the following structures taught by Hayes:

that a lower peripheral region (Fig. 6; skirt portion 13 adjacent nibs / beads 54b) of the lower portion (9) is provided with at least one recess (Fig. 6; 55) for the sake of forming an annular spring (col. 4, line 67 to col. Line 11).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the teaching of Hays to incorporate at least one recess in the lower peripheral region of the skirt (13) of Focht in order to permit inward yielding of the skirt during assemblage to the container while maintaining the dispensing head on the container during use as taught by Hayes (col. 4, line 67 to col. 5, line 11).

#### In Reference to Claims 3-6

These claims further specify the sleeve of claim 2; however the foam head and container are not claimed in combination with the sleeve in claim 2 or claims 3-6; rather the claims merely calls for a an outer crimped edge which is capable of (“intended as”) a connecting seat for the specified sleeve. Since the outer crimped edge of Focht is capable of serving as a connecting seat for the sleeve as specified in claims 3-6, the claim limitations are meet by Focht as modified by Hayes.



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NOTE: THE FOLLOWING REJECTION OF CLAIMS 2-6 ARE MADE BASED ON A NARROWER ALTERNATIVE INTERPRETATION OF THESE CLAIMS AS BEING DIRECTED TO THE FOAM HEAD AND CONTAINER IN COMBINATION WITH THE SLEEVE.

7. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focht in view Hayes as applied to claim 2 above, further in view of US Patent No. 3,156,382 to Michell (Michell).

In Reference to Claim 2

Focht as modified by Hayes above teaches a foam head and propellant container substantially according to claim 2 (see rejection of claim 2 above), but fails to teach of a sleeve sheathing at least the upper region of the propellant container (1).

Michell teaches to provide a sleeve (11; Figs. 1-4) sheathing at least the upper region of the propellant container (10), the sleeve connecting to an outer crimped edge of a valve plate (12) (col. 2, lines 27-33).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the sleeve teaching of Michell into the foam head and propellant container of Focht as modified by Hayes in order to facilitate the inclusion of a desired over cap as explicitly taught by Michell (see col. 1, lines 26-53).

In Reference to Claim 3

The sleeve taught by Michell is a “graspable part” (see Figs. 1-4).

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In Reference to Claim 4

The specification has not identified any particular structural features that provides the “slip-proof” function and has not provided any standard by which the “slip-proof” can be defined. Consequently to the extent that applicants device as claimed is slip proof, the sleeve of Michell as applied to the device of Focht as modified by Hayes is considered “slip-proof”.

In Reference to Claim 5

Michell discloses that the sleeve may be of a desired color, consequently it is considered a “decorative part” to the same extent as applicants’.

In Reference to Claim 6

Michell teaches an upper part of the sleeve (11) is provided with a clamping bead (35, 36; col. 3, lines 26-32) for mounting a guard cap (13) in such a way that it can be released again, and the outer diameter of the clamping bead (36; Fig. 5) is equivalent to the outer diameter of the crimped edge (outside of mounting cup 12; Figs. 5-6). When Focht as modified by Hayes is further modified by Michell, to include the sleeve and guard cap, the resulting device meets the claim. Michell further teaches that the sleeve (collar 11) permits the mounting of a desired size over cap (col. 1, lines 41-52).

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wassilieff and Finkenzeller are included because of their sleeve teachings. The

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remaining art listed on the FORM PTO-892 has been included because of the dispensing head mounting arrangements.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KENNETH BOMBERG whose telephone number is (571)272-4922. The examiner can normally be reached on Monday-Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Kenneth Bomberg/  
Primary Examiner, Art Unit 3754